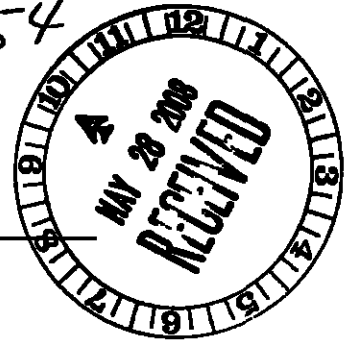


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB DOCKET NO. AB-33 (Sub- No. 265X)

**UNION PACIFIC RAILROAD COMPANY
ABANDONMENT EXEMPTION
IN LOS ANGELES COUNTY, CALIFORNIA
(SANTA MONICA INDUSTRIAL LEAD)**

**ENTERED
Office of Proceedings
MAY 28 2008
Part of
Public Record**

**MOTION TO REVOKE
NOTICE OF EXEMPTION**

James Riffin, ("Riffin"), a Class III carrier, herewith files this Motion to Revoke the Notice of Exemption ("NOE") filed in the above entitled case, on the grounds that the NOE contains false and misleading statements, and thus is void *ab initio*, and would create an unlawful stranded segment. Riffin offers the following in support of his Motion to Revoke:

1. On March 17, 2008, the Union Pacific Railroad Company ("UP") filed a NOE to abandon approximately 0.08 miles of the Santa Monica Industrial Lead from milepost 485.61 to milepost 485.69, and to discontinue trackage rights on the Santa Monica Industrial Lead from milepost 485.69 to milepost 486.00, a total distance of 0.39 miles, in the City of Los Angeles, Los Angeles County, CA ("Line").

2. In the NOE, UP failed to apprise the Board that the Santa Monica Industrial Lead was a stub-ended line. If UP were to abandon the first 400 feet of the Line, then the remaining 2.03 miles of the Line would become a stranded segment.

3. While UP did disclose in its NOE that the portion of the Line UP desired to discontinue service over, was owned by the Los Angeles Metropolitan Transportation Authority ("Metro") [formerly the Los Angeles County Transportation Commission, or "LACTC"], UP failed to

disclose who had the residual common carrier obligations.

4. In UP's April 23, 2008 Reply to Riffin's Notice of Intent to File an Offer of Financial Assistance ("OFA"), UP revealed that Metro had purchased the Santa Monica Industrial Lead from Southern Pacific in 1992. UP further revealed, in footnote 1, that Metro has a residual common carrier obligation over the 0.31 mile segment that UP desired to discontinue service over

5. In *Southern Pac Transp Co – Abandonment Exemption – Los Angeles County, CA*, 8 ICC 2d 495 at 508 (1992) ("*SP 139X*"), the Interstate Commerce Commission ("Commission") held that when Metro acquired the Line, it also acquired the common carrier obligations associated with the Line.

6. In *SP 139X*, in footnote 13 on p. 510, the Commission indicated Metro (or more precisely, LACTC, Metro's predecessor), purchased that portion of the Santa Monica Industrial Lead that lies between MP 485.69, at the intersection of Metro's "Blue Line," and the end of the Line at MP 499.89, at the east boundary of 17th Street, in Santa Monica, a total distance of 14.2 miles.

7. In *SP 139X*, SP sought abandonment authority for that portion of the Santa Monica Industrial Lead that lies between MP 487.72, near Grand Avenue, to milepost 494.64, near Culver Junction, a total distance of 6.93 miles. See fn 21, p. 514. Since the Commission held Metro had acquired the common carrier obligations associated with the Line when it acquired the Line, the Commission revoked SP's NOE, then on its own motion, granted SP authority to discontinue service on the portion of the Line that lies between MP 487.72 and MP 494.64.

8. In *SP 139X* at p. 512, the Commission exempted Metro (LACTC) from 49 U.S.C. Subtitle IV for that portion of the Line that lies between MP 487.72 and MP 494.64. The Commission specifically stated the exemption was limited to that portion of the Line that was the subject of SP's abandonment exemption, which was between MP 487.72 and MP 494.64. See *SP 139X* at p. 513

9. In footnote 25 on p 518, the Commission noted Offers of Financial Assistance for that portion of the Line which was exempted from 49 U S C. SubTitle IV, (between MP 487 72 and MP 494 64), would be futile, since the Commission had granted LACTC (Metro) authority to abandon this portion of the Line at will

10. Careful study of *SP 139X* reveals:

- A Metro (LACTC) acquired the portion of the Line that lies between MP 485.69 and MP 499.89, at the end of the Line, a total distance of 14.2 miles.
- B. Metro acquired the common carrier obligations associated with the entire 14.2 mile Line.
- C. Metro was exempted from 49 U.S.C. Subtitle IV for that portion of the Line that lies between MP 487.72, at Grand Ave, and MP 494.64. For this portion of the Line, Metro could abandon the Line without any further action by the Commission.
- D. For that portion of the Line that was between MP 485.69, at LACTC's "Blue Line," and MP 487.72, at Grand Ave, LACTC (Metro) became the common carrier This portion of the Line was subject to full Commission jurisdiction

11. Careful study of aerial photographs [available at www.maps.live.com] of the Line between MP 487.72, at Grand Ave (2 blocks east of the I-110 freeway), and MP 494 64, revealed that LACTC (Metro) exercised its abandonment authority for this portion of the Line. The I-110 freeway severed the Line. Immediately west of the I-110 freeway, a coliseum was built on the right-of-way. Large portions of the Line were removed or paved over

12. Abandonment authority for that portion of the Line that lies between MP 485.69, at Long Beach Ave, and MP 487 72, at Grand Avenue, was never sought nor granted

13. In a May 6, 2008 filing, Metro indicated it proposes to seek at some time in the future, abandonment authority for that portion of the Line that lies between MP 485 69 and 486.00, a distance of 0.31 miles. Metro did not comment on the remaining portion of the Line that lies between MP 486.00 and MP 487.72.

14. It should be noted, if Metro were to seek abandonment authority only for that portion of the Line that lies between MP 485.69 and 486.00, then the remaining portion of the Line, between MP 486.00 and MP 487.72, would become an unlawful stranded segment.

15. The abandonment authority UP seeks, for the portion of the Line that lies between MP 485.61 and MP 485.69, if granted, would leave an unlawful stranded segment between MP 485.69 and MP 487.72

16. The discontinuance of trackage rights authority UP seeks, over that portion of the Line that lies between MP 485.69 and 486.00, may create a stranded trackage-rights segment Riffin has been unable to locate any decision which granted SP or UP authority to discontinue their trackage rights, or to discontinue service, over that portion of the Line that lies between MP 486.00 and MP 487.72.

17. Both UP and Metro have common carrier obligations associated with the remainder of the Line. To provide rail service for future shippers, the 400 feet of the Line between MP 485.61 and 485.69 must be preserved. If a shipper on the portion of the Line that lies between MP 485.69 and 487.72 were to demand service, then the provider of that service (UP or Metro), would have to use that portion of the Line that lies between MP 485.61 and 485.69, in order to gain access to the national rail transportation system

18. UP failed to reveal to the Board that the Line was a stub-ended Line, failed to reveal to the Board that if abandonment authority for the portion of the Line that lies between MP 485.61 and 485.69 were to be granted, that would create an unlawful stranded segment; and failed to reveal to the Board that granting UP authority to discontinue service from MP 486.69 to MP 486.00, would leave UP with stranded trackage rights between MP 486.00 to MP 487.72, and would leave UP with a stranded obligation to provide common carrier service from MP 486.00 to MP 487.72 Riffin would argue that due to the above infirmities, the Board **must revoke UP's NOE.**

19. It should be noted, if the Board had permitted the OFA process to proceed, and if Riffin had been permitted to purchase the portion of the Line that lies between MP 485.61 and MP 485.69, then no stranded segment would have been created, and there would have been no need to revoke UP's NOE. Once again, because the rail carrier asked the Board to exempt an abandonment proceeding from the OFA process, instead of facilitating the rail carrier's desire to expeditiously abandon its obligations on a line, the rail carrier's common carrier obligations with respect to the line will be significantly prolonged. If the Board let the OFA process play out, the rail carrier would be relieved of its common carrier obligation far more quickly

20. The following quote on p.4 of EP 678, Served April 23, 2008, seems very appropriate:

"In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful. Not only is the rail line unlawfully severed from the national transportation system when this occurs, but the Board's ability to carry out its obligation under NEPA and NHPA may then be adversely affected. ... Railroads that take such actions may find that obtaining abandonment authority is delayed ... "

Respectfully submitted,



James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2008, a copy of the foregoing Motion to Revoke Notice of Exemption, was served by first class mail, postage prepaid, upon Gabriel S Meyer, Asst General Attorney for Union Pacific, STOP 1580, 1400 Douglas Street, Omaha, NE 68179, and upon Charles Spitulnik, Kaplan Kirsch Rockwell, Ste 905, 1001 Connecticut Ave, N.W., Washington, DC 20036, counsel for Metro.



James Riffin